

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION

DATE: April 10, 2009

REGULATION FILE: REG-2009-00009

**TITLE MARKETING REPRESENTATIVE CERTIFICATE
APPLICATION AND RENEWAL**

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 1 of the California Code of Regulations the new Article 13: Form of Application for Title Marketing Representative Certificate of Registration, consisting of new Sections 2194.50, 2194.51, 2194.52, 2194.53, 2194.54 and 2194.55. The regulations set forth the form of application for, and for renewal of, the title marketing representative certificate of registration. The proposed regulations are substantially identical to emergency regulations currently in effect, but contain additional provisions governing renewal of the certificate.

Proposed changes to the emergency regulations currently in effect are indicated by underline and strikeout in the currently proposed text. However, members of the public are invited to submit comments on any provision in the noticed text, and are not limited to commenting only on the material that appears therein as underlined or stricken.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, about this regulation, as follows:

Date and time:	Tuesday, May 26 at 10:00 a.m.
Location:	Department of Insurance Administrative Hearing Bureau Hearing Room 45 Fremont Street, 22nd Floor San Francisco CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on May 26, 2009. Please direct all written comments to the following contact person:

George Teekell, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4390

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Charlene Ferguson
California Department of Insurance
320 Capitol Mall
Sacramento, CA 95814
Telephone: (916) 492-3010

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at his address listed above, no later than 5:00 p.m. on May 26, 2009. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: teekellg@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of George Teekell and sent to the following facsimile number: (415) 904-5490. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 12404, 12418, 12418.1, 12418.2, and 12418.3 (Stats. 2008, ch. 280, §§ 1-2 (SB 133)). Insurance Code sections 12404, 12418, 12418.1, 12418.2, and 12418.3 provide authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989), and *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994).

INFORMATIVE DIGEST

Summary of Existing Law

Signed into law on September 25, 2008, SB 133 (Aanestad) provides that “[n]o person shall be employed as a title marketing representative in this state unless the person holds a valid ‘certificate of registration’ as a title marketing representative issued by the commissioner” Ins. Code § 12418, subd. (a). The legislation defines the term “title marketing representative” as “a natural person employed by a title insurer, underwritten title company, or controlled escrow company whose primary duty is to market, offer, solicit, negotiate, or sell title insurance.” Ins. Code § 12418, subd. (b). In order to receive a title marketing representative certificate of registration, applicants must apply using “a form prescribed by the [Insurance] [C]ommissioner.” Ins. Code § 12418.1, subd. (a). Further, the form of application “shall prescribe the disclosure of information that will aid the commissioner in determining whether the prerequisites for the certificate have been met.” Id. The legislation becomes effective on January 1, 2009.

The legislation specifies that if an “application is found to be defective or incomplete,” the Department shall so notify the applicant, giving him or her fifteen days from the receipt of the Department’s notice in which to complete, or remedy the defect in, the application. Ins. Code § 12418.1, subd. (d). Provisional authority to operate as a title marketing representative is conferred upon applicants “submitting an application filed with the department,” until such time as the application is approved or denied. Ins. Code § 12418.1, subd. (e). “An applicant with a pending application,” the statute proceeds, “shall be deemed to be operating on a provisional basis.” Id.

The legislation further specifies that applicants are to pay an application fee to be determined by the Department, not to exceed \$200. Ins. Code § 12418.1, subd. (c). Each application must include a statement, signed by an officer of the company by whom the applicant is or will be employed, certifying that the applicant will be provided certain training. Ins. Code § 12418.1, para. (b)(2). The employer is required to notify the Department if the title marketing representative’s employment is terminated and, should the title marketing representative become employed by another title company, the new title company is required to notify the Department of that fact. Ins. Code § 12418.1, subd. (f).

The statute specifies that certain existing Insurance Code sections that apply generally to the licensing of insurance producers also apply “to all applicants or holders of a certificate of registration.” Ins. Code § 12418.4, subd. (a). Specifically enumerated among these applicable code sections, Insurance Code section 1669, for instance, provides for denial of an application, without the necessity of a hearing, to applicants having committed felonies or certain misdemeanors, to applicants who have had a professional, occupational or vocational license denied for cause, and to applicants who have had such a license revoked within five years of the date of the filing of the application in question. Another of the enumerated existing code sections provides more subjective grounds for denial of an application: “The applicant is not of good business reputation,” for example, or “[t]he applicant is lacking in integrity.” Ins. Code § 1668, subs. (d) and (e).

Title 18, United States Code, section 1033 provides that it is a criminal offense for an individual who has been convicted of a felony involving dishonesty or breach of trust, or any violation of 18 U.S.C. § 1033, to willfully engage or participate in the business of insurance unless that person has first obtained the written consent of the appropriate regulatory official. Further, it is a criminal offense for any person to willfully employ, or willfully permit, such "prohibited persons" to participate in the business of insurance without the required written consent. 18 U.S.C. § 1033. Title insurance is the business of insurance for this purpose.

Policy Statement Overview

The purpose of the proposed regulations is to implement SB 133. The problem the regulations are intended to address is that applications must by law be submitted to the Department, but there is currently little or no guidance available as to the content of these applications or the method whereby they will be submitted. Specifically, the commissioner is required to prescribe the form of the application for the title marketing representative certificate of registration and to specify the information applicants will be required to provide that will aid the Commissioner in determining whether to issue or deny the certificate.

As a practical matter, the regulations must, at the very least, provide a means of determining whether or not an application is complete and has been filed with the Department. The Department seeks to set out in the proposed regulations an application process that is efficient, that is fair to applicants and that, above all, protects the interests of consumers.

Effect of Proposed Action

To apply for the title marketing representative certificate, all applicants will be required to fill out an online form and provide fingerprint impressions. The online portion of the application will require the applicant to provide identification information necessary for purposes of ensuring that the applicant is who he or she claims to be. The online application will require citizenship information and work history for the preceding five years. The online application will also require the applicant to provide answers to certain background questions. Applicants whose answers to the background questions indicate that grounds for denial of the application (e.g., a criminal record) may be present must, in order to complete the application, submit to the Department a written statement detailing the circumstances of the potentially problematic personal history in question and submit documentation of the relevant proceedings (e.g., charging documents and court documents.)

All applicants who complete the online application will be deemed to have completed the application for the certificate, to have filed the application for the certificate and to have an application pending with the Department. Accordingly the applicant will be permitted to operate as a title marketing representative on a provisional basis, as specified in statute. However, in the event the Department sends an applicant a notification that his or her application is incomplete or deficient, the applicant must respond within fifteen days of receiving the notification, or his or her application will at that time be deemed to be incomplete, not filed and not pending with the Department. Consequently the applicant's provisional authority to operate as a title marketing representative will be suspended.

The Department may require that certain information and documents, all as identified in the regulations, be submitted in the applicant's response to the Department's notification of incompleteness or deficiency in order for the applicant to avoid having his or her provisional authority suspended. For example, the Department may require certain evidence, specified in the regulations, that the applicant has had his or her fingerprint impressions made using the procedure set out in the regulations. This, and any other information identified in the Department's notification as being necessary in order to complete or perfect the application must, according to Insurance Code section 121418.1, be sent to the Department within fifteen days of the receipt by the applicant of the notification. However, it may sometimes be impossible for applicants who are required to submit court documents, for example, to obtain the documents in time to provide them to the Department within fifteen days of receiving the Department's notification. For this reason, the regulations specify that applicants who are required to submit such documentation but who do not yet possess the required documents must make copies of the letters they send to the court, for instance, in an effort to obtain the documents. Applicants may then submit the copies of this correspondence to the Department within the statutory timeframe and, by doing so, maintain their provisional authority intact. The regulations provide that the Department cannot suspend an applicant's provisional authority unless the notification of deficiency has been sent within thirty days after the applicant completes the online application.

The regulations specify that provisional authority to operate as a title marketing representative shall not be granted to an applicant who previously has had his or her provisional authority suspended two or more times, or to an applicant who has previously had an application denied. These applicants will be required to wait until the certificate is actually issued before being permitted to operate as a title marketing representative.

Employers of title marketing representatives will be required to make the statutorily mandated statement that training will be provided, and their statutorily mandated notifications of employment or termination of a title marketing representatives, online using the Department's online business entity services. However, employers will also be required to maintain hardcopy of the statement that training will be provided, signed by an officer of the company, to satisfy the pertinent provision of statute.

The title marketing representative certificate of registration must be renewed every three years, by completing the online renewal application set forth in the regulations. Applicants for renewal who answer background questions on the renewal application to the effect that they have been the subject of certain criminal or administrative proceedings since they last applied for or renewed their certificate will be required to submit specified court and/or other documents detailing the proceedings in question. Representatives and their employers on record with the Department will be sent an email renewal notice not less than 60 days before the certificate is to expire.

Comparable Federal Law

There is no existing federal statute or regulation that is comparable to the proposed regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State. We estimate that the Department of Insurance will incur \$1,396,016 of additional costs in the processing of applications for the title marketing representative certificate of registration. The Department expects to receive \$600,000 in fees through fiscal year 2011-2012.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are title insurers, underwritten title companies and, if they are independent contractors, title marketing representatives. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Department estimates that title insurers and underwritten title companies will be required to devote to training and to monitoring of applications and renewals staff resources representing approximately \$100 per title marketing representative. The application fee for a title marketing representative certificate of registration is \$200, and applicants must also pay a fingerprinting fee of \$60.95. Additionally, the certificate must be renewed every three years, for a renewal fee of \$200.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Department does not expect that the regulations will create or expand jobs or businesses within the state. However, it is estimated that approximately ten to fifteen applicants for the title marketing representative certificate of registration will fail to complete the prescribed form of application and will therefore be prohibited from continuing to operate as title marketing representatives. Roughly a third of these representatives may be independent contractors and, as such, constitute businesses. Accordingly, we estimate that less than ten such businesses would be eliminated. The Department is aware of no basis for assuming that applicants for the certificate who fail to complete the application and for this reason lose their jobs will not be replaced, however.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will affect small businesses to the extent that it affects title marketing representatives who are independent contractors. Certain underwritten title companies that may also be considered a small business will also be affected. However, title insurance companies, which will also be affected, are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final

statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the righthand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2009-00009" (the Department's regulation file number for these regulations) in the search field. Alternatively, search by keyword ("representative," for example, or "certificate"). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Title Marketing Rep. Certificate Application & Renewal' link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.